IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
MAY 13 2005 WH
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

PEARLE VISION, INC., a Delaware Corporation, and PEARLE, INC., a Delaware Corporation,	)	
Plaintiffs,	)	No. 04 C 4349
v.	)	**Judge Joan H. Lefkow**
VICTOR ROMM, individually, VICTOR ROMM d/b/a ROMM & COMPANY, INC., VICTOR ROMM d/b/a ROMM VISION ENTERPRISES, INC., VICTOR ROMM d/b/a EYES 2000, LTD., ROMM & COMPANY, INC., an Illinois Corporation, ROMM VISION ENTERPRISES, INC., an Illinois Corporation, and EYES 2000, LTD., an Illinois Corporation,	)	**Magistrate Judge Nolan**
Defendants.	)	

MOTION FOR DISMISSAL OF PLAINTIFF'S COUNTERCLAIM FOR WANT OF PROSECUTION AND AN ORDER OF DEFAULT IN DEFENDANT'S FAVOR

Pearle Vision, Inc., and Pearle, Inc., by and through their attorneys, Michael J. Wall and Kevin J. Moore of Rothschild, Barry & Myers, moving for dismissal of plaintiff's Counterclaim for want of prosecution and an order of default in favor of defendants under local Rule 41.1, state:

1. This is a suit to terminate four Pearle Vision franchises and recover the leased premises. Defendant has counterclaimed, alleging wrongful termination. On February 15, 2005, the defendants' attorneys were granted leave to withdraw for lack of cooperation. In the order granting them leave, the Court directed Dr. Romm to appear individually with new counsel for the corporate entities for the next status hearing, which was set for March 8, 2005.

2. On March 8, 2005, Dr. Romm failed to appear, and no counsel appeared for the corporate entities. The next status hearing was scheduled for March 29th.

3. On March 29, 2005, Dr. Romm appeared, and informed the Court that he planned to retain a new attorney. Accordingly, the Court set the next status for April 18, 2005, and warned Dr. Romm that he should arrange for representation by then.

4. On April 18, 2005, Dr. Romm failed to appear, and no attorney had filed an appearance on his behalf, or on behalf of any other corporate entities. The Court set the next status for May 17th, and counsel for the plaintiffs stated that on that date a dispositive motion would be filed.

5. Defendants had filed an appeal from the preliminary injunction entered on September 30, 2004. However, in February, 2005, before anything was filed in the Seventh Circuit, the same attorneys who sought leave to withdraw from the defendants' representation in the trial court, sought leave to withdraw from their representation of the defendants in the Seventh Circuit. Counsel were granted leave to withdraw, and the Seventh Circuit entered a self executing order stating that if the corporate defendants did not have representation by a date certain, they would be defaulted. In the same order, Dr. Romm was given until April 11, 2005, in which to file his brief and short appendix. When Dr. Romm failed to meet the deadline and no attorney had filed an appearance on behalf of any defendants, plaintiffs filed a motion to dismiss for want of prosecution on April 15, 2005. The Seventh Circuit immediately entered an order finding the corporate defendants to be in default, and gave Dr. Romm until May 2, 2005 to show cause why the appeal should not be dismissed in its entirety. Dr. Romm failed to file anything, and accordingly, on May 11, 2005, the Seventh Circuit entered an order dismissing the appeal in its entirety, and issued its mandate the same day.

6. Local Rule 41.1 states that "[a]n order of dismissal for want of prosecution or an order of default may be entered if counsel fails to respond to a call of the case set by order of the Court." Here, Dr. Romm has been acting as his own counsel, and he has failed to appear on a number of occasions to the call of the Court, and failed to abide by Court orders directed specifically to him. For this reason, the case should be dismissed for want of prosecution.

WHEREFORE, Pearle Vision, Inc., and Pearle, Inc., respectfully request that an order of default be entered against the defendants, and a date certain be set for the plaintiffs to prove-up their damages, and that the Counterclaim be dismissed for want of prosecution.

PEARLE VISION, INC.
PEARLE, INC.

By one of their attorneys

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